

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 28, 2009

JANUARI LAKEITHA WILLIAMS v. STATE OF TENNESSEE

**Direct Appeal from the Criminal Court for Hamilton County
No. 268606 Barry Steelman, Judge**

No. E2008-01704-CCA-R3-PC - Filed June 18, 2009

The petitioner, Januari Lakeitha Williams, appeals the Hamilton County Criminal Court's summary dismissal of her post-conviction petition on the grounds that it was untimely filed. We affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Januari Lakeitha Williams, Pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; Clarence E. Lutz, Assistant Attorney General; and William H. Cox, III, District Attorney General; for the appellee, State of Tennessee.

OPINION

I. Factual Background

Pursuant to her guilty plea, the petitioner was convicted of second degree murder and received a twenty-year sentence on October 26, 2006. No direct appeal was filed. The petitioner filed a petition for post-conviction relief on June 5, 2008, asserting numerous claims of ineffective assistance of counsel, that her Fifth Amendment rights were violated when police questioned her for three hours before advising her of her Miranda rights, that the trial judge was a former district attorney, that her attorneys had a conflict of interest, and that she was highly medicated when she entered her plea. She also asserted that her claims for relief should not be barred by the one-year statute of limitations for post-conviction actions because "she is [a layman] of the law and has to rely on the law library to assist her with all her legal work."

In its written order denying post-conviction relief, the post-conviction court noted that the petitioner signed “a waiver of possible disqualification of the judge” presiding over her guilty plea hearing and that she was sentenced in accordance with her plea agreement. Pursuant to her plea agreement, a felony murder charge and an especially aggravated robbery charged were dismissed. The post-conviction court dismissed the petition as being time-barred under Tennessee Code Annotated section 40-30-102. On appeal, the petitioner argues that her constitutional rights were violated because: 1) “she was not read her Miranda warnings when first being interrogated”; 2) she was denied the effective assistance of counsel; and 3) “she was denied a bond even while she was pregnant.”

II. Analysis

Tennessee Code Annotated section 40-30-102(a) provides that a petition for post-conviction relief must be filed within one year of the date on which the judgment became final or consideration of the petition will be time-barred. The statute emphasizes that “[t]ime is of the essence of the right to file a petition for post-conviction relief or motion to reopen established by this chapter, and the one-year limitations period is an element of the right to file [such an] action and is a condition upon its exercise.” Tenn. Code Ann. § 40-30-102(a). The statute allows a petition to be filed outside the limitations period for the following reasons: (1) the petition is based on a “final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required”; (2) the petition is based on new scientific evidence; or (3) the petition seeks relief from a sentence that was enhanced because of a previous conviction that was later held to be invalid. Tenn. Code Ann. § 40-30-102(b). The statute of limitations may also be tolled if circumstances beyond the petitioner’s control precluded her from actively raising post-conviction claims in a timely manner. Williams v. State, 44 S.W.3d 464, 471 (Tenn. 2001); Burford v. State, 845 S.W.2d 204, 208-10 (Tenn. 1992).

The petitioner pled guilty and was sentenced on October 26, 2006, and her judgment of conviction became final thirty days later. See State v. Green, 106 S.W.3d 646, 650 (Tenn. 2003). She filed her post-conviction petition on June 5, 2008, well beyond the one-year statute of limitations. Moreover, the petition does not assert that her claims fall within the exceptions set forth in Tenn. Code Ann. § 40-30-102(b) or that due process requires the tolling of the statute. Accordingly, we affirm the judgment of the post-conviction court.

III. Conclusion

Based upon the record and the parties’ briefs, we affirm the post-conviction court’s dismissal of the petition for post-conviction relief.

NORMA McGEE OGLE, JUDGE